IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1402 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 : NO

MULJI NANJI BHATTI & 2

Versus

CHANDANBEN RAVISHANKER BHATT &4

Appearance:

1. Civil Revision Application No. 1402 of 1983

MR A.M DAGLI for

MR YOGESH S LAKHANI for Petitioner

Respondents Nos. 1 & 2 :: Served

Respondents Nos. 3 & 4 :: DELETED

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/09/2002

ORAL JUDGEMENT

The learned advocate Mr. A.M Dagli appears for

the petitioners and on instructions states that pending this Revision Application, the respondent no. 3 has died and his heirs have not been impleaded. The respondent no. 4 has also not been served as yet. Hence, the names of the respondents nos. 3 & 4 are ordered to be deleted from the cause title of this Revision Application.

This Revision Application arises from the judgment and order dated 9th August, 1983 passed by the learned Assistant Judge, Rajkot in Civil Appeal No. 309 of 1980. The petitioners before this Court are the respondents-defendants. It appears that one Nanji Devaji was the tenant of the suit premises, being part of a residential house situated at Manhar Plot, Rajkot. On the death of the said Nanji Devaji, the defendants i.e., the present petitioners and the respondent no. 4 became the statutory tenants of the suit premises. The suit premises belonged to one Ravishanker Gaurishanker Bhatt. After the death of the said Ravishanker Gaurishanker Bhatt, the said residential house was partitioned between the plaintiffs nos. 1 & 2; the widow and the son of the said Ravishanker Bhatt, on one hand and the plaintiff no. 3; the brother of the said Ravishanker Bhatt, on the other hand. Alongwith the rest of the house, the suit premises was also partitioned between the plaintiffs as aforesaid i.e., the southern part of the suit premises came to the share of the plaintiffs nos. 1 & 2, the northern part of the suit premises came to the share of the plaintiff no. 3. It was agreed between them to share the rent equally i.e., both the parties were entitled to receive Rs. 9=50 paise per month from the defendant tenants. Since, the said Nanji Devaji was in arrears of rent and so also his heirs, the plaintiffs gave suit notice demanding the arrears of rent and also the possession of the suit premises. The suit notice was duly replied to by the defendants.

The plaintiffs instituted Rent Civil Suit No. 181 of 1979 in the Court of Small Causes at Rajkot for recovery of arrears of rent and the possession of the suit premises. The learned trial Judge under his judgment and order dated 14th April, 1980 was pleased to dismiss the suit. Feeling aggrieved, the plaintiffs preferred above referred Civil Appeal No. 309 of 1980 in the Court of District Judge, Rajkot. The appeal was partly allowed by the learned Assistant Judge, Rajkot under the impugned judgment and order dated 9th August, 1983. Feeling aggrieved, the defendants nos. 1 & 2 have preferred the present Revision Application.

The Court below has found the suit notice to be

legal and valid, however, has recorded a finding that the defendants were ready and willing to pay the rent and had paid the rent regularly. The learned Judge also observed that the defendant no. 3 had acquired residential house of his own and was residing there. The defendant no. 1 also had acquired a house of his own and was residing there. It was the defendant no. 2 alone who was residing in the suit premises alongwith his family. Further, the plaintiff no. 3 required the suit premises for his bonafide personal use. Since it was the northern part of the suit premises which had come to the share of the defendant no. 3, the Court below was pleased to pass a partial decree in favour of the plaintiff no. 3 i.e., a decree for recovery of possession of the northern part of the suit premises. The rest of the appeal and the suit were dismissed.

As recorded hereinabove, the respondent no. 3 i.e., the plaintiff no. 3 herein has died pending this Revision Application, his heirs or legal representatives also have not been brought on the record of the matter. The Revision Application, therefore, cannot proceed against the plaintiff no. 3 or against his heirs and legal representatives. As far as the respondents nos. 1 & 2 are concerned, no decree has been passed in favour of the said respondents. Hence, the Revision Application cannot proceed in absence of the defendant no. 3 and the Revision Application, therefore, requires to be dismissed. Even otherwise, I do not find any illegality committed by the Court below in passing the partial decree in favour of the plaintiff no. 3. On merits also, the findings recorded by the Court below and the order for recovery of the possession of the suit premises do not warrant interference.

For the aforesaid reasons, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

[Miss R.M Doshit, J.]

Prakash*